IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1875 of 2004

Between:

1. Government of Andhra Pradesh, rep. by its Principal Secretary,
   Revenue (Services-III-I) Department, Hyderabad.
2. The Special Chief Secretary & Chief Commissioner of Land Administration,
   A.P, Hyderabad.
3. The District Collector, Anantapur District, Anantapur.

..... PETITIONERS

AND

Smt. K. Rajeswari,
O/o the Special Deputy Collector, HNSS, Guntakal, Anantapur District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ or proceedings more particularly one in the nature of "Writ of Certiorari" calling for the records pertaining to the order passed in O.A.No. 2115/1996 on the file of Hon'ble A.P.A.T. Hyderabad dated 31-1-2003 and quash the same as illegal and arbitrary

Counsel for the Petitioner:GP FOR SERVICES II

Counsel for the Respondent .:M. SURENDAR RAO

The Court made the following :

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ORDER: (Per the Hon'ble Sri Justice G.Bikshapathy)

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This Writ Petition is filed by the Government challenging the order dated 31-01-2003 in O.A.No.2115 of 1996 passed by the A.P. Administrative Tribunal, Hyderabad.

2. The respondent is an applicant before the Tribunal. She filed O.A. seeking declaration that she is entitled to get her seniority in the cadre of Senior Assistant from14-10-1980 and on that basis she is entitled to be included in the panel of Deputy Tahasildar, in the relevant panel years at least from the date that her juniors were included in the panel years and not including the name of the applicant in the earlier panels as illegal and arbitrary.

3. The matter has a chequered history. The applicant was initially appointed by the District Selection Committee on 29-11-1976. She was allotted to Command Area Development Authority (for brevity "CADA"). Thereafter, on 14-10-1980, she was promoted as Senior Assistant and she became approved probationer in the cadre of Senior Assistant. As the Command Area Development Authority was disbanded, the District Collector, Ananthapur sent her to the Local Fund Audit Department. The said department expressed its inability to take the services of the applicant. Therefore, she waited for 87 days and thereafter, she was taken into the Revenue Department on 10-6-1988 as Senior Assistant. Thereafter, she was reverted as Junior Assistant on the ground that she did not complete the survey training as required under Rules. Therefore, she filed R.P.No. 4594 of 1988 questioning the order of reversion. The Tribunal passed interim order directing the respondents to continue the applicant as Senior Assistant. The applicant again filed O.A.No. 2825 of 1992 seeking

declaration that she is entitled to continue as Senior Assistant and she cannot be reverted on the ground that she is not possessing the survey training qualification. O.A.No. 2825 of 1992 was finally disposed of by the Tribunal along with R.P.No. 4594 of 1988, by order dated 19-3-1995, wherein the Tribunal allowed the claim of the applicant and set aside the impugned order of reversion. Since the order passed by the Tribunal in O.A.No.2825 of 1992 has become final, the Tribunal directed that the applicant should be absorbed as Senior Assistant. Therefore, it was incumbent on the part of the authorities to treat the applicant as having been absorbed as Senior Assistant right from the date she was appointed in the Revenue Department with effect from 10-6-1988. Thereafter, the respondent made a representation before the authorities for complying with the directions of the Tribunal. The respondent authorities passed an order dated 20-6-1995 stating that the applicant will be treated as Senior Assistant from 19-10-1991 but not from 10-6-1988 or from 8-6-1989 on which date she was appointed as Senior Assistant. In the meanwhile, the applicant also completed her survey training on 12-9-1992 and also other tests for holding the Senior Assistant post. Therefore, she sought for fixation of seniority in the cadre of Senior Assistant from14-10-1980. As no counter has been filed by the department, the Tribunal disposed of the O.A. with the following directions.

> *"As could be seen from the allegations made, already a finding was given by this Tribunal to consider her seniority from 14-10-1980. So, when once that has become final her seniority has to be fixed from 14-10-1980. It may be true that by having come into Revenue Department she must necessarily have all the requisite qualifications to hold the post of Sr. Assistant. So, even that also the applicant has complied by passing the training on 12-9-1992. So, the name of the applicant should be considered w.e.f. 14-10-1980 and consequent upon that necessary promotion is to be given as per the seniority list of Revenue Department and pass necessary orders within 3 months from the date of receipt of a copy of this order. Notional benefits should be given up to the date of filing of the petition and monetary benefits should be given subsequent to the date of filing of the petition. O.A. is disposed of accordingly."*

Assailing the said direction, the present Writ Petition has been filed.

4. The learned Government Pleader appearing for the petitioners submits that the order of the Tribunal is not sustainable inasmuch as, the respondent joined the

department only on 10-6-1988 and she did not possess the requisite qualifications for holding the Post of Senior Assistant. For holding the post of Senior Assistant one should pass Revenue Part I to III tests. By virtue of the interim orders passed by the Tribunal, she continued as Senior Assistant. Therefore, the Tribunal ought not to have allowed the fixation of her seniority from 14-10-1980, on which date she did not possess the qualifications required for holding the post of Senior Assistant in the Revenue Department. The learned counsel would also submits that the Tribunal has granted benefits to the applicant far beyond that were prayed in the O.A. and directed the department to promote her to the next higher post without stipulating the nature of the post and the date on which, she has to be promoted. Therefore, the order is liable to be set aside.

5. On the other hand, the learned counsel appearing for the respondent submits that the respondent was appointed as a Senior Assistant in the erstwhile department on 14-10-1980. As there was no break in the services in the Revenue Department, she is entitled to continue in the aided post for the purpose of promotion and other purposes. He further submits that at the time of promotion three persons namely, Sudhakar Reddy, Rajeswara Rao and Jangappa were given reposting orders by the Collector. However, in the case of Gangappa and Sudhakar Reddy, the Government considered the matter and granted Seniority in the cadre of Senior Assistant from the date they joined the Revenue Department. The Government issued G.O.Ms.No. 1358, dated 27-6-2002 in respect of Gangappa. Hence, the learned counsel submits that the same promotion has to be meted out to the petitioner also as three persons became surplus when CADA Wing was disbanded. Hence, it cannot be said that the order of the Tribunal suffered from any illegality and irregularity. The learned counsel further submits that basing on seniority, from 14-10-1980, the applicant is entitled for promotion to the post of Deputy Tahsildar on par with the similarly situated persons.

6. We heard the learned Government Pleader for petitioners and also the learned counsel for the respondent.

7. It is not in dispute that the respondent and others became surplus consequent on the disbandment of CADA Wing and subsequently, they were allotted to Revenue Department.

8. The question that arose before the Revenue Department was as to which date

has to be assigned to them for the purpose of seniority. Since the applicant and others did not complete the survey training, they were not promoted. But, however, on filing the O.A. it was clarified that they are also entitled for promotion as Senior Assistants even though they did not pass necessary tests. Even otherwise, the applicant passed the test in January, 1990. As can be seen from G.O.No.1358, dated 27-6-2002 issued in respect of Gangappa, the Government granted notional seniority in the cadre of Senior Assistant with effect from 11-6-1988 and if the applicant wants the same treatment, she is also entitled for notional seniority from the date she joined the department, namely 10-6-1988. But, she cannot have a better seniority than what was assigned to Gangappa. In fact, the fixation of seniority from the date, they joined the post in the Revenue Department cannot be said to be illegal or contrary to law. When they joined the department in 1988, they did not possess the requisite qualification for holding the post in the Revenue Department and they were lacking Survey Training. Under these circumstances claiming seniority from 14-10-1980 is wholly misconceived and the Tribunal has not taken into consideration this aspect. When similarly situated persons were granted promotion who joined the Revenue Department, there is no reason why the applicant was given a separate treatment for giving such benefits.

9. Under those circumstances, we find that the order of the Tribunal directing the department to grant notional seniority from 14-10-1980 is not sustainable and accordingly set aside. The respondent is entitled for fixation of seniority in the cadre of Senior Assistant from the date she joined the Revenue Department, i.e. 10-6-1988, on par with the benefit which was granted to Gangappa. With regard to other benefits it is open for the department to consider the case of the respondent along with others for other promotions to which she will be eligible. Even though, the learned counsel for the respondent submits that she is entitled for the promotion to the Post of Deputy Tahsildar, we leave it open to the department to consider the case in accordance with the rules.

10. The learned counsel for the petitioners submits that the case of Gangappa stands on different footing in the panel of Deputy Tahsildar for the years 1996-97 and he was promoted as Deputy Tahsildar by order dated 29-1-2003. In such a situation, we find that the respondent is also entitled for the similar treatment. However, the matter is left open to the authorities to consider the same in

accordance with the Rules, keeping in view the treatment given to Gangappa.

11. With the above modifications the Writ Petition is disposed of. No order as to costs.

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G.Bikshapathy, J.

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P.S.Narayana, J.

10th March, 2005.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Government of Andhra Pradesh, rep. by its Principal Secretary,
   Revenue (Services-III-I) Department, Hyderabad.
2. The Special Chief Secretary & Chief Commissioner of Land Administration,
   A.P, Hyderabad.
3. The District Collector, Anantapur District, Anantapur.

4. 2 CCs to G.P. for Services-II, High Court Buildings, Hyd. (OUT)

5. 1 CC to MR.SURENDER RAO

6. 2 CD copies.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

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